

Message Text

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ORIGIN L-03

INFO OCT-01 EUR-25 NEA-10 ISO-00 CIAE-00 PM-07 H-03 INR-10

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USIA-15 AID-20 IGA-02 IO-14 AF-10 SAM-01 /157 R

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NEA/EGY:MR. ANDERSON

L/T: MR. BEVANS

L:PM:MR. MICHEL

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C O N F I D E N T I A L STATE 091848

E.O. 11652: GDS

TAGS: EG, UK, PFOR, MARR, EAID

SUBJECT: SUEZ CANAL CLEARANCE AGREEMENT

REFS: (A) CAIRO 2649; (B) CAIRO 2157; (C) CAIRO 2648

1. FAHMY APRIL 25 LETTER ON SUBJECT AGREEMENT HAS BEEN

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CAREFULLY REVIEWED IN DEPT AND DEFENSE. WITH RELATIVELY

MINOR EXCEPTIONS NOTED BELOW, WE FIND SUBSTANCE OF FAHMY'S COMMENTS GENERALLY ACCEPTABLE, BUT ARE CONCERNED HIS LETTER FAILED TO CONFIRM EXISTENCE OF AN AGREEMENT BETWEEN THE TWO GOVERNMENTS. WE HAVE ALSO REVIEWED CAREFULLY YOUR REF C COMMENTS INDICATING STRONG PREFERENCE OF GOE FOR NO FORMAL AGREEMENT WHATEVER AND YOUR JUDGMENT IT WILL BE EXTREMELY DIFFICULT TO GET ANYTHING FURTHER FROM GOE ON THIS SUBJECT. NONETHELESS, BECAUSE OF STRONGLY FELT NEED OF USG TO HAVE CLEAR AGREEMENT ON BOTH STATUS OF FORCES COVERAGE AND ON MATTERS OF LIABILITY AND INDEMNIFICATION, WE FEEL IT NECESSARY TO RESPOND TO FAHMY'S NOTE, SETTING OUT OUR UNDERSTANDING OF THE AGREEMENT AND REQUESTING GOE'S RESPONSE ACKNOWLEDGING EXISTENCE OF AN AGREEMENT. OUR RESPONSE IS DESIGNED TO HAVE THE APPEARANCE OF INFORMALITY BUT AT THE SAME TIME TO CREATE, WHEN ACCEPTED BY GOE, BINDING OBLIGATIONS UNDER INTERNATIONAL LAW.

2. SEPARATE ISSUE IS THE FORM OF AGREEMENT ULTIMATELY REACHED. IDEALLY, WE SHOULD HAVE A SINGLE DOCUMENT TO

WHICH BOTH SIDES HAVE AGREED, AND DEPT AND DEFENSE WHICH BOTH SIDES HAVE AGREED, AND DEPT AND DEFENSE WOULD PREFER THAT RESULT. HOWEVER, WE FEEL EXCHANGE OF APRIL 13 AND 25, TOGETHER WITH NOTE PROPOSED BELOW AND GOE'S RESPONSE, WOULD CREATE AN AGREEMENT OF SUFFICIENT CLARITY. DUE PRINCIPALLY TO YOUR WARNINGS ON POLITICAL DIFFICULTIES EGYPTIANS ARE HAVING WITH THIS AGREEMENT AND ON DIFFICULTY WE WILL EXPERIENCE IN SEEKING A FURTHER RESPONSE FROM THEM, WE HAVE DECIDED AGAINST PRESENTING A NEW FULL TEXT INCORPORATING FAHMY'S COMMENTS AND FURTHER COMMENTS WE HAVE. RATHER, YOU ARE REQUESTED TO PRESENT THE LESS FORMAL NOTE SET FORTH PARA 3 BELOW WHICH SEEKS EGYPTIAN CONCURRENCE IN OUR UNDERSTANDING OF THE AGREEMENT. BY SEPARATE TELEGRAM WE ARE TRANSMITTING A COMPOSITE TEXT WHICH SETS FORTH IN A SINGLE DOCUMENT THE AGREEMENT AS IT WOULD EXIST IF GOE ACCEPTS OUR UNDERSTANDINGS. DEPT AND DEFENSE PROPOSE TO USE THIS DOCUMENT FOR OPERATIONAL PURPOSES, AND WE ASK THAT YOU HAND IT INFORMALLY TO GOE FOR ITS REFERENCE.

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3. TEXT OF RESPONSE TO FAHMY'S APRIL 25 LETTER FOLLOWS - BEGIN QUOTE:

I HAVE THE HONOR TO ACKNOWLEDGE RECEIPT OF YOUR EXCELLENCY'S LETTER OF APRIL 25, 1974 CONCERNING THE AGREEMENT PROPOSED IN MY NOTE OF APRIL 13, 1974 IN CONNECTION WITH UNITED STATES ASSISTANCE TO THE GOVERNMENT OF EGYPT

IN THE CLEARANCE OF MINES AND ORDNANCE FROM THE SUEZ CANAL, AND TO EXPRESS THE APPRECIATION OF THE GOVERNMENT OF THE UNITED STATES FOR THE ATTENTION YOUR GOVERNMENT HAS ACCORDED THIS IMPORTANT MATTER.

THE FOLLOWING REPRESENT THE UNDERSTANDINGS OF MY GOVERNMENT CONCERNING THIS AGREEMENT:

1. THE MUTUAL WAIVER DESCRIBED IN PARAGRAPH 2 OF YOUR APRIL 25, 1974 LETTER SHALL APPLY ONLY TO THE CLAIMS OF EITHER GOVERNMENT RESULTING FROM ANY ACT OR OMISSION IN CONNECTION WITH THE ACTIVITIES REFERRED TO IN PARAGRAPH 1 OF MY NOTE OF APRIL 13, 1974. THIS MUTUAL WAIVER IS NOT INTENDED TO LIMIT INDIFICATION AGAINST CLAIMS BY OTHERS PROVIDED FOR IN PARA 4 OF THAT NOTE.
2. CONCERNING PARA 3A OF YOUR LETTER OF APRIL 25, 1974, THE ENTRY OF AIRCRAFT AND VESSELS AND DEPARTURE OF AIRCRAFT SHALL BE SUBJECT TO PRIOR AUTHORIZATION BY EGYPTIAN COMPETENT AUTHORITY, AND REASONABLE NOTIFICATION SHALL BE GIVEN PRIOR TO DEPARTURE OF VESSELS.
3. ANY MEMBER OF THE FORCE TAKEN INTO CUSTODY BY EGYPTIAN AUTHORITIES AS SPECIFIED IN PARA 4 OF YOUR LETTER OF APRIL 25, 1974 SHALL BE SUBJECT TO INTERROGATION ONLY IN THE PRESENCE OF A REPRESENTATIVE OF THE UNITED STATES GOVERNMENT WHO MAY ADVISE THE SUSPECT OF HIS LEGAL RIGHTS, AND THE SUSPECT SHALL BE DELIVERED TO THE NEAREST AUTHORITY REPRESENTING THE FORCE WITHIN 24 HOURS OF HIS FIRST DETENTION.
4. WITH RESPECT TO PARAGRAPH 4D OF YOUR LETTER OF APRIL 25, 1974, THE COMMANDER OF THE FORCE SHALL DELIVER TO THE

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EGYPTIAN COMPETENT AUTHORITIES A REPORT OF THE RESULTS OF THE INVESTIGATION AND OF ANY SUBSEQUENT DISCIPLINARY ACTION.

5. RELIEF FROM THE CIVIL JURISDICTION OF EGYPTIAN COURTS PROVIDED FOR IN PARAGRAPH 5 OF YOUR APRIL 25, 1974 LETTER WILL INCLUDE RELIEF FROM ANY EXERCISE OF ADMINISTRATIVE JURISDICTION IN MATTERS RELATED TO CARRYING OUT THE ACTIVITIES REFERRED TO IN PARAGRAPH 1 OF MY APRIL 13, 1974 NOTE.

IF THE FOREGOING UNDERSTANDINGS REPRESENT THE WISHES OF THE GOVERNMENT OF THE ARAB REPUBLIC OF EGYPT, I HAVE THE HONOR TO REQUEST YOUR CONFIRMATION THAT MY NOTE OF APRIL 13, 1974, YOUR RESPONSE OF APRIL 25, 1974, AND THIS NOTE

CONSTITUTE AN AGREEMENT BETWEEN OUR TWO GOVERNMENTS.

ACCEPT, EXCELLENCY, THE ASSURANCE OF MY HIGHEST CONSIDERATION. END QUOTE.

4. FOREGOING TEXT MAY REQUIRE CHANGE IN REFERENCE TO YOUR "NOTE" OF APRIL 13 IF IN FACT IT WAS A LETTER AS FAHMY SUGGESTS IN HIS OF APRIL 25.

5. DEFENSE CONCERNED THAT IDENTITY CARDS NOT BE REQUIRED FOR SHIPS' CREWS WHO REMAIN ABOARD THEIR VESSELS, AND MAY WISH TO RAISE THIS INFORMALLY WITH EGYPTIANS OR AS A "SUPPLEMENTARY ARRANGEMENT" UNDER THE AGREEMENT.

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Message Attributes

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